

CONSERVATION EASEMENT

This CONSERVATION EASEMENT made this ____ day of ____

R E C I T A L S:

A. Those individuals listed on Exhibit A, with an address of _____ (collectively the "Grantors") are the owners in fee simple of certain real property, (the "Protected Property") that has ecological, scientific, educational and aesthetic value in its present state as a natural area that has not been subject to development or exploitation. The Protected Property is located in _____ Counties, North Carolina and is more particularly described in Exhibit B attached. THE NATURE CONSERVANCY (the "Grantee") is a non-profit corporation incorporated under the laws of the District of Columbia as a tax exempt public charity under Section 501(c)(3) and 509(a)(1) of the Internal Revenue Code, qualified under section 170(h) of the Internal Revenue Code to receive qualified conservation contributions, and having its headquarters at 1815 North Lynn Street, Arlington, Virginia 22209 and a local address at The Nature Conservancy, North Carolina Chapter, 4011 University Drive, Suite 201, Durham, NC 27707, and whose purposes include, inter alia, preservation of natural areas for scientific, charitable, educational and aesthetic purposes.

B. The Protected Property is a significant natural area that qualifies as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii) as amended, and in regulations promulgated thereunder; specifically the Protected Property contains high quality examples of Carolina longleaf sandhills natural communities, with suites of associated species that include rare, threatened or endangered species, including, but not limited to Red-cockaded woodpeckers (*Picoides borealis*). Preservation of the Protected Property is pursuant to federal, state, and local governmental conservation policy and will yield a significant public benefit, specifically, the protection, conservation and preservation of the natural communities and associated species, including federally listed species.

C. The specific conservation values of the Property are documented in an Easement Documentation Report, prepared the Grantee, and signed and acknowledged by the Grantor, that establishes the baseline condition of the Protected Property at the time of this grant and includes reports, maps, photographs, and other documentation.

D. The Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Protected Property in perpetuity, and the State of North Carolina has authorized the creation of Conservation Easements pursuant to North Carolina General Statutes §121.34. et seq. and Grantor and Grantee wish to avail themselves of the provisions of that law.

NOW, THEREFORE, the Grantor, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein and as an absolute and

unconditional conveyance, hereby grants, bargains, sells, and conveys unto the Grantee a Conservation Easement in perpetuity over the Protected Property of the nature and character as follows:

1. **PURPOSE.** The purpose of this Conservation Easement is to ensure that the Protected Property will be retained forever in its predominantly natural, scenic, forested, and open space condition; to protect any rare plants, animals, or plant communities on the Protected Property; and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property described above. The Grantor intends that this Conservation Easement will restrict the use of the Protected Property to only such activities as are consistent with the purpose of this Conservation Easement.

2. **GRANTOR'S RESERVED RIGHTS.** The Grantor hereby reserves the following rights:

2.1 **Land Management Plan.** The Grantor may harvest timber, rake pine straw, and engage in other timber management activities, develop for residential purposes limited portions of the Protected Property, or engage in any agricultural activities only in strict accordance with a Land Management Plan mutually agreed upon by the Grantor and the Grantee. The Land Management Plan must, at all times, protect the natural values of the Protected Property, including, but not limited to, protection of federally listed species, and should incorporate best forestry practices for sustainable yield and ecosystem management, best agricultural practices for sustainable agriculture and minimal impacts on adjacent lands and waters, and best engineering practices for minimizing the impact of any permitted development. An agreed upon Land Management Plan shall remain effective for so long as the parties shall agree; either party may terminate an existing plan by notice to the other. Absent a currently agreed upon Land Management Plan, no harvesting, raking, agriculture, or residential development or other management or development shall occur.

2.2 **Transfer.** The right to sell, give, mortgage, lease, or otherwise convey the Protected Property, provided such conveyance is subject to the terms of this Conservation Easement and written notice, is provided to the Grantee in accordance with paragraph 17.6 below.

2.3 **Structures.** The right to maintain such structures as currently exist on the Protected Property (including the right to replace, but not expand, on the same site, with like structures used for the same or similar purposes).

2.4 **Diseased Trees.** The right to cut and remove diseased trees, shrubs, or plants and to cut firebreaks, subject to the prior written approval of the Grantee pursuant to paragraph 4.5 below, except that such approval shall not be required in the case of emergency firebreaks.

3. **PROHIBITED USES.** Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, except as provided in paragraph 2 above:

3.1 No Construction. There shall be no constructing or placing of any building, tennis or other recreational court, landing strip, mobile home, swimming pool, fence, or sign (other than those required by the Grantee for appropriate management), asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, or any other permanent structure or facility on or above the Protected Property.

3.2 No Excavation. There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads or change in the topography or surface hydrology of the Protected Property in any manner.

3.3 No Cutting. Except to the extent permitted by the Land Management Plan described in Paragraph 2.1, there shall be no removal, harvesting, destruction, or cutting of trees, shrubs or plants, planting of trees, shrubs or plants, use of fertilizers, plowing, raking of pine straw, introduction of non-native animals, grazing of domestic animals, or disturbance or change in the natural habitat in any manner.

3.4 No Biocides. There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides.

3.5 No Dumping. There shall be no storage or dumping of ashes, trash, garbage, or other unsightly or offensive material, hazardous substance or toxic waste, nor any placement of underground storage tanks in, on, or under the Protected Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Protected Property or on adjacent property, if owned by the Grantor that could cause erosion or siltation on the Protected Property.

3.6 No Pollution. There shall be no pollution, alteration, or depletion of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall surface or subsurface water be extracted or otherwise taken for commercial or industrial purposes or for export or other sale or use away from the Protected Property, nor shall activities be conducted on the Protected Property or on adjacent property, if owned by Grantor, that would be detrimental to water purity or that could alter the natural water level or flow in or over the Protected Property.

3.7 No Vehicles. There shall be no operation of dune buggies, motorcycles, all-terrain or off-road vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles, except for rubber-tired, wheeled vehicles on established roads. Horseback riding and mountain bike or other bicycle riding shall occur only on established trails in areas that do not adversely affect endangered or threatened plant or animal species.

3.8 Density. Neither the Protected Property nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any

other lands pursuant to a transferable development rights, scheme cluster development arrangement or otherwise; provided, however that with prior written permission of the Grantee, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Protected Property.

4. GRANTEE'S RIGHTS. To accomplish the purpose of this Conservation Easement, the following rights are conveyed to the Grantee by this Conservation Easement:

4.1 Right to Protect. The right to preserve and protect the conservation values of the Protected Property.

4.2 Right of Entry. The right to enter the Protected Property at all reasonable times and with prior notice and, if necessary, across other lands retained by the Grantor for the purposes of: (a) inspecting the Protected Property to determine if the Grantor is complying with the covenants and purposes of this Conservation Easement; (b) enforcing the terms of this Conservation Easement; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate with or without order of Court, to remedy or abate violations hereof; (d) making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor; and (e) monitoring and management as described below.

4.3 Monitoring and Management. The right, but not the obligation, to monitor the condition of the rare plant arid animal populations, plant communities, and natural habitats on the Protected Property and to manage them to the extent deemed appropriate by the Grantee, to ensure their continued presence and viability on the Protected Property. Such activities shall be in accordance with management practices of the Grantee, which may include but not be limited to, mowing, fencing, trapping, or prescribed burning (including the construction of appropriate fire lines); provided, however, that prescribed burns may only be conducted by the Grantee with the consent of the Grantor.

4.4 Enforcement. The right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Conservation Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to paragraph 10.

4.5 Discretionary Consent. The Grantee's consent for activities otherwise prohibited under paragraph 3 above, or for any activities requiring Grantee's consent under paragraph 2 above, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in paragraph 3 are deemed desirable by both the Grantor and the Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and permission for activities requiring the Grantee's consent under paragraph 2, shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the purpose of this Conservation Easement. The Grantee may give its permission only if it determines in its sole discretion, that such activities (1) do not violate the purpose of this Conservation Easement and (2) either enhance or do not impair any significant conservation interests associated with the Protected Property. Notwithstanding the foregoing,

the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Conservation Easement or to allow any residential, commercial, or industrial structures or any commercial or industrial activities not provided for above.

5. ACCESS. Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof if no such right existed in the public immediately prior to the execution of this Conservation Easement. The United States Department of Defense may use the Protected Property for military training consistent with the environmental training restrictions of Fort Bragg, NC. It is anticipated that these activities (such as, but not limited to, individual and small squad dismounted training, wheeled vehicle travel on existing roads and firebreaks, and helicopter transportation to insert and remove small squads and in medical emergencies) will create minimal environmental disturbance consistent with the purposes of the conservation easement. If these activities create more than minimal disturbance, all training will immediately cease until the cause of the disturbance is determined and corrected. There would be no access for training on any area designated as biologically sensitive by the Grantee. Additional training exceeding the scope of the aforementioned activities may be conducted only with approval of the Grantee and Grantor and subject to such limitations or restrictions as the Grantee and Grantor may agree upon. In addition, the U.S. Army may remove any paratrooper, paratrooper equipment, or parachutes from the Protected Property, in the event of accidental or inadvertent landing on the Protected Property without the approval from the Grantor or Grantee.

6. COSTS AND LIABILITIES. The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage. The Grantor shall keep the Grantee's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by the Grantor.

Each party agrees to release, hold harmless, defend and indemnify the other from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses, and fees that the one party may suffer or incur as a result of or arising out of the activities of the other party on the Protected Property.

7. TAXES. The Grantor agrees to pay any real estate taxes or other assessments levied on the Protected Property. If the Grantor becomes delinquent in payment of taxes or assessments, so that a lien is created against the Protected Property, the Grantee, at its option, shall, after written notice to the Grantor, have the right to purchase and acquire the Grantor's interest in the Protected Property by paying funds to discharge the lien or delinquent taxes or assessments, or to take such other actions as may be necessary to protect the Grantee's interest in the Protected Property and to assure the continued enforceability of this Conservation Easement.

8. TITLE. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey this Conservation Easement; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement, and that the

Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.

9. **HAZARDOUS WASTE.** The Grantor covenants, represents, and warrants to the Grantee that no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of or deposited in or on the Protected Property and that there are not now any underground storage tanks located on the Protected Property.

10. **GRANTEE'S REMEDIES.** If the Grantee becomes aware of a violation of the terms of this Conservation Easement, the Grantee shall give notice to the Grantor, at the Grantor's last known post office address, of such violation via certified mail, return receipt requested, and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition at the time of this grant. Grantor agrees that the Easement Documentation Report shall be deemed to provide objective information concerning the Protected Property's condition at the time of this grant. Failure by the Grantor to abate the violation and take such other corrective action as may be requested by the Grantee within thirty (30) days after receipt of such notice shall entitle the Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement; to require the restoration of the property to its previous condition; to enjoin the non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from the non-compliance. Such damages, when recovered, may be applied by the Grantee, in its sole discretion, to corrective action on the Protected Property. If the court determines that the Grantor has failed to comply with this Conservation Easement, the Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys fees, in addition to any other payments ordered by such court. If the court finds that the Grantor has complied with this Conservation Easement, the Grantee shall be liable for the Grantor's reasonable attorney's fee expended in defending the Grantee's enforcement action.

10.1 Emergency Enforcement. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the Grantee may pursue its remedies under this paragraph without prior notice to the Grantor or without waiting for the period for cure to expire.

10.2 Failure to Act or Delay. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Easement by any prior failure to act and the Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act or delay by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Conservation Easement.

10.3 Violations Due to Causes Beyond Grantor's Control. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Easement caused by the unauthorized wrongful acts of third persons, the Grantor agrees, upon request by the Grantee, to assign its right of action to the

Grantee to join in any suit, or to appoint the Grantee its attorney-in-fact for the purposes of pursuing enforcement action, all at the election of the Grantee.

11. PARTIES SUBJECT TO EASEMENT. The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall not only be binding upon the Grantor but also its lessees, agents, personal representatives, successors and assigns, and all other successors to Grantor in interest and shall continue as a servitude running in perpetuity with the Protected Property.

12. SUBSEQUENT TRANSFERS. The Grantor agrees that the terms, condition, restrictions, and purposes of this grant or reference thereto will be inserted by the Grantor in any subsequent deed or other legal instrument by which the Grantor divests either the fee simple title or possessory interest in the Protected Property; and the Grantor further agrees to notify the Grantee of any pending transfer at least thirty (30) days in advance.

13. MERGER. The Grantor and the Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Protected Property.

14. ASSIGNMENT .The parties hereto recognize and agree that the benefits of this easement are in gross and assignable, and the Grantee hereby covenants and agrees that if it transfers or assigns the easement it holds under this indenture, the organization receiving the interest will be a qualified organization as that term is defined in Section 110(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, that is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance.

15. EXTINGUISHMENT. The Grantor hereby agrees that, at the time of the conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee, with a fair market value of the Conservation Easement as of the date of the conveyance that is at least equal to the proportionate value that this Conservation Easement at the time of the conveyance bears to the fair market value of the property as a whole at that time.

That proportionate value of the Grantee's property rights shall remain constant. When a change in conditions takes place which makes impossible or impractical any continued protection of the Protected Property for conservation purposes, and the restrictions contained herein are extinguished by judicial proceeding, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Protected Property shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in and defined under P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended and in regulations promulgated thereunder.

16. EMINENT DOMAIN. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of the taking to recover the full value of the taking and all incidental or direct damages resulting from it, and the proceeds shall be divided in accordance with the proportionate value of the Grantee's and Grantor's interests and Grantee's proceeds shall be used as specified above. All expenses incurred by the Grantor and the Grantee in such action shall be paid out of the recovered proceeds.

17. MISCELLANEOUS PROVISIONS.

17.1 Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

17.2 Successors and Assigns. The term "Grantor" shall include each individual listed on Exhibit A, jointly and severally, and each such person's heirs, executors, administrators, successors and assigns and shall also mean the masculine, feminine, corporate, singular or plural form of the, word as needed in the context of its use. The term "Grantee" shall include the Grantee's successors and assigns.

17.3 Re-recording. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement; for such purpose, the Grantor appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

17.4 Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

17.5 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

17.6 Notices. Any notices required in this Conservation Easement shall be sent by registered or certified mail to the following address or such address as may be hereafter specified by notice in writing: Grantor: _____.
Grantee: _____.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Grantee. forever .

IN WITNESS WHEREOF, the Grantor has executed and sealed this document the day and year first above written.

GRANTOR: _____

GRANTEE: By: _____

Its: _____

STATE OF NORTH CAROLINA }

COUNTY OF _____ }

I, _____ a Notary Public of the County and State aforesaid, certify that
_____ personally appeared before me this day and acknowledged the
execution of the foregoing instrument.

WITNESS my hand and official seal, this the --day of --.

---'-(SEAL) NOTARY PUBLIC My Commission Expires:

STATE OF NORTH CAROLINA }

COUNTY OF -- }

I, _____ Notary Public for said county and state, do hereby certify that
_____, personally appeared before me this day and acknowledged that
he/she is the of _____ (name of corporation), the foregoing instrument
was signed in its _____, sealed with its corporate seal, and attested by
himself/herself as its _____.

WITNESS my hand and official seal, this the _____ day of _____, 1995-

(SEAL) NOTARY PUBLIC My commission expires: